IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
Second Appeal No.121 of 2002

Shri Bahiravdeo Trust — Appellant
Vs.
Sahebrao Mahadeo Shedage & ors. — Respondents

Mr.Uday Warunjikar for appellant.
Mr.R.N.Jawal for resp.nos. 1 to 3, 5 and 6.

CORAM: B.H.MARLAPALLE,J.

March 20, 2007.

P.C.

. Heard Mr.Warunjikar, the learned counsel for the appellant-plaaintiff who had instituted Regular Civil Suit No.22 of 1997 before the learned Civil Judge, Junior Division at Medha and the in the same while filing a written statement the defendants raised an objection regarding the jurisdiction of the said court to entertain the suit. An application under Section 9A of CPC was filed by the defendants and, therefore, the preliminary issue regarding the maintainability of the suit was framed. By referring to the scheme of Section 92 of CPC read with Section 50 of the Public Trust Act, 1950, the trial Court recorded a finding that the civil court of original jurisdiction is the District Court and considering the nature of the suit, it was necessary for the plaintiffs to approach the District Court. The

learned Judge of the trial Court, therefore, while allowing the application filed under Section 9A of CPC held that it was not having jurisdiction to entertain the suit and, therefore, directed the suit to be presented before the competent court. Inspite of such order, the plaintiffs filed Regular Civil Appeal No. 130 of 1998 and admittedly under Section 96 of CPC. The 3rd Additional District Judge at Satara dismissed the suit by his judgment and order dated 7/2/2002. He concurred with the findings of the trial Court that it was not having jurisdiction to entertain the suit and the said order too was just and proper. The plaintiffs have come in this second appeal before this Court and obviously challenging the view taken by the trial Court that the suit was not maintainable in law.

. On a preliminary query raised by me as to the maintainability of the regular civil appeal and consequently this second appeal, Mr. Warunjikar, the learned counsel for the appellant - Trust referred to the definition of the term "decree" under Section 2(2) of CPC and submitted that though the plaint was returned to present it to the appropriate Court, the order passed by the trial Court is decree

adjudicating the plaintiff's rights in asmuchas the plaintiff's right to file the suit before the learned Civil Judge, Junior Division has been finally adjudicated.

. The submissions made by the learned counsel for the appellant - Trust cannot be accepted. There can be no dispute that the order passed by the trial Court on 17/2/1998 returning the plaint for being presented to the competent Court is an order passed under Order VII Rule 10 of CPC and, therefore, an appeal from order would lie against the said order as per the provisions of Section 104 read with Order III Rule 1 of CPC. In my considered view there was no decree within the meaning of Section 2(2) of CPC and, therefore, an appeal under Section 96 of CPC as presented by the plaintiff - Trust was not maintainable.

. The plaint was returned on 17th February 1998 and the lower appellate court agreed with the view taken by the trial court by its order dated 7th February 2002 i.e. four years later and for the last more than five years this second appeal has been pending before this Court for admission and as noted

earlier, the foundation of this appeal itself is based on the appeal which was not maintainable before the District Court.

. Under these obtaining circumstances, it is not necessary to entertain this second appeal and the Trust may institute a fresh suit, if it so desires. The statement made in paragraph no.6 of the affidavit filed by the respondent in Civil Application No. 189 of 2002 shall continue to operate for a further period of four weeks from today.

(B.H